

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2014-2015

CR-13-0494

W.B.S.

v.

State of Alabama

Appeal from Etowah Circuit Court
(JU-10-168.07)

PER CURIAM.

W.B.S. appeals from the circuit court's denial of his Rule 32, Ala. R. Crim. P., petition.

On August 17, 2011, the Etowah Juvenile Court adjudicated W.B.S. a delinquent based on its finding beyond a reasonable

doubt that W.B.S. was guilty of three counts of first-degree sexual abuse (a Class C felony) and one count of first-degree sodomy (a Class A felony). See §§ 13A-6-66(a)(1) and 13A-6-63(a)(1), Ala. Code 1975. As disposition, W.B.S. was committed for an indefinite amount of time to the Alabama Department of Youth Services Sexual Offender Program, and he must register as a sex offender for the rest of his life. W.B.S.'s direct appeal was affirmed by unpublished memorandum. W.B.S. v. State (No. CR-10-1806), 130 So. 3d 587 (Ala. Crim. App. 2012) (table). This Court's memorandum on direct appeal states that W.B.S. was no older than 15 years old when the offenses took place.¹ When affirming W.B.S.'s direct appeal, this Court noted that it appeared W.B.S. may have a valid ineffective-assistance-of-counsel claim that could be pursued in a Rule 32 postconviction petition.²

¹W.B.S. asserts in his Rule 32 petition that he was 13 or 14 years old when the alleged offenses took place. See Supplemental Record at C. 6.

²The petition reflects that W.B.S. was represented by the same counsel at trial and sentencing; he had different counsel on direct appeal. This Court's unpublished memorandum on direct appeal states that trial counsel did not file any postjudgment motions (i.e., raising ineffective assistance of counsel); thus, Rule 32 would be the first opportunity W.B.S. had to raise an ineffective-assistance-of-trial-counsel claim.

On December 21, 2012, W.B.S. filed a Rule 32 petition in the Etowah County Juvenile Court, claiming that he received ineffective assistance of counsel at his juvenile court delinquency proceedings. The juvenile court dismissed the petition because it reasoned that Rule 32 provides postconviction review for only criminal convictions, and an adjudication of delinquency is not a criminal conviction. W.B.S. appealed. On August 21, 2013, this Court, having determined that the appellate record was not properly certified, transferred the cause by order to the Etowah Circuit Court for de novo proceedings.³ See Rules 28(A)(1)(b) and 28(B), Ala. R. Juv. P.⁴

Upon receipt of the case, the Etowah Circuit Court determined that the threshold question was: "Do the

³Alabama Court of Criminal Appeals case no. CR-12-1336, issued on August 21, 2013.

⁴Rule 28(A)(1)(b), Ala. R. Juv. P., states that an appeal will be from the juvenile court if, among other conditions, "[t]he parties stipulate that only questions of law are involved and the juvenile court certifies those questions" Rule 28(B), Ala. R. Juv. P., states in part: "Appeals from final orders or judgments in all other cases, including those cases in which there is not an adequate record as provided in subsection (A) of this rule, shall be to the circuit court for trial de novo"

provisions of Rule 32, [Ala. R. Crim. P.], apply in juvenile cases?" (C. 3.) The circuit court instructed the parties to file legal memorandums addressing this question. W.B.S., however, also filed what he styled as a "Motion for Relief From Judgment Under Rule 60(b), [Ala. R. Civ. P.]." In that motion, W.B.S. argued that, if Rule 32, Ala. R. Crim. P., does not apply to juvenile proceedings, he should be able to obtain relief under Rule 60(b), Ala. R. Civ. P. The circuit court, however, concluded that neither Rule 32, nor Rule 60(b) was applicable to juvenile-delinquency proceedings. W.B.S. appealed.

W.B.S. contends on appeal that the circuit court erred in dismissing both his Rule 60(b) motion and his Rule 32 petition. He argues that he should be allowed to seek relief under one of the above procedures.

I.

With regard to W.B.S.'s claim that Rule 60(b) provides a possible mechanism by which a juvenile who has been adjudicated delinquent may challenge the effectiveness of his or her counsel, that claim is without merit. Although he argues in his brief on appeal that he should be allowed to

seek relief under Rule 60(b), W.B.S correctly recognizes that juvenile-delinquency proceedings are "quasi-criminal in nature." (W.B.S.'s brief, p. 10). See also Driskill v. State, 376 So. 2d 678, 679 (Ala. 1979) (recognizing "the quasi-criminal nature of delinquency proceedings"). Because juvenile-delinquency proceedings are "quasi-criminal in nature," the Alabama Rules of Civil Procedure are not applicable to those proceedings, see Rule 1(a), Ala. R. Juv. P., and Rule 60(b) cannot be the mechanism by which W.B.S.--or any other juvenile who has been adjudicated delinquent--can challenge trial counsel's effectiveness.

II.

W.B.S.'s claim that Rule 32, Ala. R. Crim. P., provides a possible mechanism by which a juvenile who has been adjudicated delinquent may challenge his or her counsel's effectiveness is an issue of first impression.

The question before this Court is a purely legal one; accordingly, this Court applies a de novo standard of review. Acra v. State, 105 So. 3d 460, 464 (Ala. Crim. App. 2012).

To resolve this question this Court must determine whether the scope of Rule 32, which is set forth in Rule 32.1,

Ala. R. Crim. P., allows juveniles who have been adjudicated delinquent to file a Rule 32 petition in a juvenile court collaterally attacking a delinquency adjudication. "In determining the meaning of a statute or a court rule, this Court looks first to the plain meaning of the words as they are written." Ex parte Ward, 957 So. 2d 449, 452 (Ala. 2006).

The language used in Rule 32.1 is plain and expressly extends "postconviction" relief to only a "defendant who has been convicted of a criminal offense." (Emphasis added.) To conclude that Rule 32 applies to juvenile adjudications, this Court must hold that the phrase "defendant who has been convicted of a criminal offense," includes both juveniles -- who are certainly not classified as "defendants" -- and delinquency adjudications -- which are not criminal convictions, see § 12-15-220(a), Ala. Code 1975.

"Only the Alabama Supreme Court has the authority to promulgate rules and regulate the procedures applicable to criminal proceedings. § 12-2-7(4), Ala. Code 1975; Ala. Const. 1901, § 150. The Alabama Supreme Court in Marshall v. State, 884 So. 2d 900 (Ala.2003), noted that it has the authority to amend the rules of procedure and stated:

"'The Court of Criminal Appeals claimed in Brooks [v. State], 892 So. 2d 969 (Ala. Crim. App. 2002),] that it had

"created a narrow exception to the 42-day rule [in Rule 4(b)(1), Ala. R. App. P.,] in *Fountain v. State*, 842 So. 2d 719 (Ala. Crim. App. 2000)...." *Brooks*, 892 So. 2d at 971. The Court of Criminal Appeals may not, however, amend the rules of procedure.'

"884 So. 2d at 905 n.5 (second emphasis added). See also *Dutell v. State*, 596 So. 2d 624, 625 (Ala. Crim. App. 1991) (stating that, in construing the Alabama Rules of Criminal Procedure promulgated by the Alabama Supreme Court, 'this court will attempt to ascertain and to effectuate the intent of the Alabama Supreme Court as set out in the rule' and citing *Shelton v. Wright*, 439 So. 2d 55 (Ala.1983)). As an intermediate appellate court, this Court may interpret and apply the existing rules of procedure, but it may not rewrite them."

Ankrom v. State, 152 So. 3d 373, 391-92 (Ala. Crim. App. 2011)
(Welch, J., dissenting) (some emphasis added).

Thus, the plain language of Rule 32.1, Ala. R. Crim. P., does not include juveniles who have been adjudicated delinquent. However, as noted in the dissent "other options exist through which W.B.S. could seek relief." ____ So. 3d ____ (Burke, J., dissenting). For example, nothing precludes a juvenile from challenging counsel's effectiveness in a motion for a new trial, on direct appeal, or by filing a common-law writ. Here, because W.B.S. has lost the opportunity to file a motion for a new trial challenging his counsel's

effectiveness, see Rule 1(B), Ala. R. Juv. P., and his adjudications have been affirmed on direct appeal, W.B.S.'s only avenue for challenging his counsel's effectiveness would be through the filing of a common-law writ. Although Rule 32 "displaces all post-trial remedies except post-trial motions under Rule 24[, Ala. R. Crim. P.,] and appeal" and "[a]ny other post-conviction petition seeking relief from a conviction or sentence shall be treated as a proceeding under [Rule 32]," see Rule 32.4, Ala. R. Crim. P., Rule 32 only "displaces" such postconviction remedies for "defendant[s] who ha[ve] been convicted of a criminal offense." In other words, if a juvenile who has been adjudicated delinquent is not permitted to proceed under Rule 32, Ala. R. Crim. P., no common law "postconviction" remedies are "displaced." Thus, Rule 32 does not prohibit W.B.S. from filing a common-law writ challenging his adjudication.⁵

Nevertheless, as noted by the dissent a "well-defined procedure would be preferable to using common law writs to

⁵It would be beyond illogical to conclude that Rule 32 does not apply to juveniles and get also to conclude that Rule 32 operates to preclude that same juvenile from taking action other than a Rule 32 petition.

bring such claims." ____ So. 3d at ____, (Burke, J., dissenting). Thus, the Alabama Supreme Court is urged to amend either the Alabama Rules of Juvenile Procedure or the Alabama Rules of Criminal Procedure to provide juvenile delinquents a mechanism for postadjudication relief.

As set out above, W.B.S. challenges the circuit court's decision finding that Rule 32 does not apply to a juvenile who has been adjudicated delinquent. Based on the plain language of Rule 32.1 this Court cannot find that the circuit court incorrectly determined that Rule 32 does not apply to juveniles who have been adjudicated delinquent. Thus, this Court concludes that the circuit court correctly determined that Rule 32 does not apply to W.B.S.'s juvenile delinquency adjudication.

Therefore, the judgement of the circuit court is affirmed.⁶

AFFIRMED.

⁶Affirming the circuit court's judgment would not preclude W.B.S. from pursuing the postadjudication remedies discussed above. In fact, affirming the circuit court's decision and requiring W.B.S. to file a common law-writ in the juvenile court places this case in the court best suited to address W.B.S.'s claim -- the Etowah Juvenile Court.

Windom, P.J., and Welch, J., concur. Joiner, J., concurs specially, with opinion. Kellum, J., concurs in the result. Burke, J., dissents, with opinion.

JOINER, Judge, concurring specially.

W.B.S. challenges the circuit court's dismissal of his Rule 32, Ala. R. Crim. P., petition. In determining the propriety of that decision, this Court makes two conclusions: (1) that, because "the plain language of Rule 32.1, Ala. R. Crim. P., does not include juveniles who have been adjudicated delinquent," ___ So. 3d at ___, Rule 32 is not a mechanism by which a juvenile who has been adjudicated delinquent may challenge counsel's ineffectiveness; and (2) that "W.B.S.'s only avenue for challenging counsel's effectiveness would be through the filing of a common-law writ." ___ So. 3d at ___. I agree with both conclusions. I write separately, however, to express additional reasons for concurring in the main opinion.

On appeal, W.B.S. raises two issues. Specifically, W.B.S. challenges the judgment of the circuit court dismissing both his Rule 32, Ala. R. Crim. P., petition and his Rule

60(b), Ala. R. Civ. P., motion and maintains that he should be afforded the opportunity to collaterally challenge his counsel's effectiveness by filing either a Rule 32 petition or a Rule 60(b) motion.⁷

Before addressing W.B.S.'s claim that he should be able to challenge his counsel's effectiveness under Rule 32, Ala. R. Crim. P., however, I note that it does not appear that either the Alabama Rules of Juvenile Procedure or any statute provides a procedural mechanism by which a juvenile who has been adjudicated delinquent may file a "postadjudication" petition challenging counsel's effectiveness.

Rule 1(a), Ala. R. Juv. P., explains, in relevant part:

"If no procedure is specifically provided in these Rules [of Juvenile Procedure] or by statute, ... the Alabama Rules of Criminal Procedure shall be applicable to those matters that are considered criminal in nature."

(Emphasis added.) Because no procedural mechanism for "postadjudication" petitions are specifically provided for in either the Alabama Rules of Juvenile Procedure or a statute,

⁷The main opinion correctly concludes that a Rule 60(b) motion is not an appropriate procedural vehicle for a juvenile who has been adjudicated delinquent to collaterally challenge his delinquency adjudication, and I do not address that issue.

W.B.S. attempts to seek relief through the use of Rule 32, Ala. R. Crim. P.

Because juvenile-delinquency proceedings are "quasi-criminal in nature," see Driskill v. State, 376 So. 2d 678, 679 (Ala. 1979) (recognizing "the quasi-criminal nature of delinquency proceedings"), and because Rule 1(a), Ala. R. Juv. P., specifically recognizes the applicability of the Rules of Criminal Procedure to juvenile proceedings that are "criminal in nature" when no Rule of Juvenile Procedure or statute specifically provides a procedural rule, Rule 32 could potentially provide juveniles who have been adjudicated delinquent the procedural mechanism by which to file a "postadjudication" petition.⁸ Thus, the question for this

⁸This argument--that specifically allowing the Alabama Rules of Criminal Procedure to control in an area where no juvenile procedural rule exists--could be a basis on which this Court could conclude that a juvenile who has been adjudicated delinquent may, in fact, seek postadjudication relief by filing a Rule 32 petition. As explained more thoroughly below, however, I do not believe that this Court can read Rule 32 in so liberal a manner as to incorporate juvenile adjudications. Specifically, I believe that the clearly defined scope of Rule 32, as set forth in Rule 32.1, Ala. R. Crim. P., operates to exclude a juvenile who has been adjudicated delinquent from obtaining "postadjudication" review under its provisions. Indeed, Rule 32.1, Ala. R. Crim. P., requires that a criminal conviction occur as a condition precedent to obtaining relief under Rule 32.

Court to resolve, as the main opinion correctly frames it, is: "[W]hether the scope of Rule 32, which is set forth in Rule 32.1, Ala. R. Crim. P., allows juveniles who have been adjudicated delinquent to file a Rule 32 petition in a juvenile court collaterally attacking a delinquency adjudication." ___ So. 3d at ___.

The main opinion answers this question in the negative, holding:

"The language used in Rule 32.1 is plain and expressly extends 'postconviction' relief to only a 'defendant who has been convicted of a criminal offense.' (Emphasis added.) To conclude that Rule 32 applies to juvenile adjudications, this Court must hold that the phrase 'defendant who has been convicted of a criminal offense,' includes both juveniles--who are certainly not classified as 'defendants'--and delinquency adjudications--which are not criminal convictions, see § 12-15-220(a), Ala. Code 1975."

___ So. 3d at ___. Like the main opinion, I do not read the phrase a "defendant who has been convicted of a criminal offense" as necessarily including a "juvenile who has been adjudicated delinquent."

Although W.B.S. correctly contends that juvenile-delinquency proceedings are characterized as "quasi-criminal in nature," such a characterization does not bring a juvenile

adjudication within the scope of Rule 32. Specifically, such a characterization does not lead to the conclusion that a delinquency adjudication is the functional equivalent of a criminal conviction. In fact, § 12-15-220(a), Ala. Code 1975, expressly provides that a delinquency adjudication "shall not be considered to be a conviction or impose any civil disabilities ordinarily resulting from a conviction for a crime."⁹ (Emphasis added.) Additionally, recognizing that juvenile adjudications are "quasi-criminal in nature" necessarily demonstrates that juvenile adjudications are, in fact, not criminal. Indeed, Black's Law Dictionary defines

⁹Although I recognize that the underlying nature of W.B.S.'s delinquency adjudication subjects him to having to comply with the sex-offender registration requirements, I do not believe that those requirements move his juvenile adjudication into the realm of a criminal conviction. This Court has long recognized that sex-offender registration is mandated under a "civil, nonpunitive legislative scheme." Lee v. State, 895 So. 2d 1030, 1042 (Ala. Crim. App. 2004). In other words, sex-offender registration is civil in nature, not criminal. Although requiring this civil, nonpunitive measure appears to be in conflict with § 12-15-220(a), Ala. Code 1975, juvenile-sex-offender registration is mandated by § 15-20A-28, Ala. Code 1975, which was enacted more recently than § 12-15-220. Thus, to the extent those statutes conflict, if at all, § 15-20A-28, Ala. Code 1975, controls because it is the most recent expression of the legislature's will. See, e.g., Mosley v. State, [Ms. CR-13-0613, Feb. 6, 2015] ___ So. 3d ___, ___ (Ala. Crim. App. 2015) (citing Ex parte McCormick, 932 So. 2d 124, 138-39 (Ala. 2005)).

the term "quasi" as: "Seemingly but not actually; in some sense or degree; resembling; nearly." Black's Law Dictionary 1363 (9th ed. 2009) (emphasis added).¹⁰ Thus, although it is correct to characterize juvenile-delinquency proceedings as "quasi-criminal in nature," such a characterization does not

¹⁰Black's Law Dictionary also defines the term "quasi-criminal proceeding" as:

"A civil proceeding that is conducted in conformity with the rules of a criminal proceeding because a penalty analogous to a criminal penalty may apply, as in some juvenile proceedings. For example, juvenile delinquency is classified as a civil offense. But like a defendant in a criminal trial, an accused juvenile faces a potential loss of liberty. So criminal procedure rules apply."

Black's Law Dictionary 1324 (9th ed. 2009). Although this definition, as well as Rule 1(a), Ala. R. Juv. P., recognizes the application of criminal procedural rules to juvenile-delinquency proceedings, it does not necessarily follow that all criminal procedural rules apply to juvenile proceedings. Indeed, Rule 1(a), Ala. R. Juv. P., places an express limitation on the use of the Alabama Rules of Criminal Procedure by limiting those rules to operation only when "no procedure is specifically provided" in the juvenile rules. Additionally, Rule 32 is a unique rule of procedure that is "'considered to be civil in nature,'" see Ex parte Jenkins, 972 So. 2d 159, 163 (Ala. 2005) (quoting Ex parte Hutcherson, 874 So. 2d 386, 389 (Ala. 2002) (Stuart, J., dissenting)), and specifically limits its application to "defendant[s] who ha[ve] been convicted of a criminal offense." Furthermore, Rule 32 does not operate in the same manner as do other rules of criminal procedure; specifically, the filing of a Rule 32 petition institutes an entirely new proceeding in the court of original conviction.

mandate a finding that a juvenile adjudication is the functional equivalent of a criminal conviction. See also Jennings v. State, 384 So. 2d 104, 105 (Ala. 1980) (recognizing that "our juvenile statute removes juveniles who have committed a crime from the jurisdiction of the criminal justice system, and establishes an entirely separate system to minister to them, a system whose aim is rehabilitative rather than retributive").

Additionally, under Rule 32.1, I cannot reconcile the term "defendant" with the term "juvenile." Indeed, both the statutes governing juvenile proceedings, §§ 12-15-1 et seq., Ala. Code 1975, and the Alabama Rules of Juvenile Procedure go to great lengths to avoid labeling juveniles who have been adjudicated delinquent as either a "defendant" or an "offender." Those statutes and rules, instead, simply refer to a juvenile as a "child," which, in my opinion, move the terms "defendant" and "juvenile" even further apart. Thus, like the main opinion, I read the scope of Rule 32 as excluding from its purview juveniles who have been adjudicated delinquent.

Furthermore, I am not persuaded by W.B.S.'s argument that, because juveniles are entitled to competent, effective counsel, see § 12-15-210, Ala. Code 1975, he is necessarily entitled to collaterally attack his counsel's effectiveness under Rule 32. I see no corollary between the right to competent, effective counsel and the ability to collaterally challenge such representation by filing a Rule 32 petition. Indeed, although the United States Supreme Court has recognized that there exists a constitutional right to counsel and "that 'the right to counsel is the right to the effective assistance of counsel,'" Strickland v. Washington, 466 U.S. 668, 686 (1984) (quoting McMann v. Richardson, 397 U.S. 759, 771 n. 14 (1970)), the United States Supreme Court has also recognized that states are not constitutionally required to provide a means for postconviction review of ineffective-assistance-of-counsel claims. See Murray v. Giaratano, 492 U.S. 1, 13 (1989) (O'Connor, J., concurring) ("A postconviction proceeding is not part of the criminal process itself, but is instead a civil action designed to overturn a presumptively valid criminal judgment. Nothing in the Constitution requires the States to provide such proceedings,

see Pennsylvania v. Finley, 481 U.S. 551, 107 S. Ct. 1990, 95 L. Ed. 2d 539 (1987)").

Additionally, even if a state chose to provide postconviction-collateral review of criminal convictions, there is no constitutional requirement for that state to extend such review to juvenile-delinquency proceedings. See, e.g., In Interest of R.R., 75 Ill. App. 3d 494, 496, 394 N.E.2d 75, 76 (1979) ("We do not believe that the provisions of the Post-Conviction Act, directly applicable to criminal proceedings, should be extended to juvenile proceedings."). Cf. Mason v. State, 323 Ark. 361, 363, 914 S.W.2d 751, 752 n.2 (1996) ("Arkansas Rule of Criminal Procedure 37 is applicable to juvenile proceedings under § 9-27-325(f), but that rule, providing defendants the opportunity to argue ineffective assistance of counsel, is available only when they are in custody. See Malone v. State, 294 Ark. 376, 742 S.W.2d 945 (1988). Here, the Masons are not in custody. For clarity, we further note that, prior to enactment of § 9-27-325(f), the court held that juvenile delinquent proceedings were not covered by Rule 37. See Robinson v. Shock, Supt., 282 Ark. 262, 667 S.W.2d 956 (1984).").

The Alabama Supreme Court has, on one occasion, addressed the applicability of Rule 32 to a juvenile proceeding. Specifically, in Ex parte A.D.R., 690 So. 2d 1208 (Ala. 1996), the Alabama Supreme Court held that a juvenile who had been transferred from the juvenile court to the circuit court could, under Rule 32, file an out-of-time appeal challenging his counsel's effectiveness at a juvenile-transfer hearing. Thus, the Alabama Supreme Court, in essence, amended Rule 32 to provide a mechanism for seeking relief in those narrow class of cases in which a juvenile sought to challenge the effectiveness of his counsel at a juvenile-transfer hearing.

After it decided A.D.R., however, the Alabama Supreme Court, rather than allowing A.D.R. to operate to amend Rule 32 for all future juvenile-transfer proceedings, decided to abrogate A.D.R. by amending the Alabama Rules of Juvenile Procedure to provide a procedure through which juveniles could challenge the effectiveness of counsel at a juvenile-transfer hearing. See Rule 1(D), Ala. R. Juv. P. In other words, although it could have amended Rule 32, Ala. R. Crim. P., to be consistent with its holding in A.D.R., the Alabama Supreme Court chose to amend only the Alabama Rules of Juvenile

Procedure. In so doing, the Alabama Supreme Court appears to have demonstrated a reluctance to allowing juveniles to challenge the effectiveness of counsel under Rule 32, Ala. R. Crim. P.

Because states are not constitutionally required to allow juveniles to collaterally challenge adjudications and because when given the opportunity to amend Rule 32 to allow for such a collateral challenge the Alabama Supreme Court declined to do so,¹¹ it is plausible that the Alabama Supreme Court intended to exclude juveniles from being able to collaterally challenge counsel's effectiveness under Rule 32, Ala. R. Crim. P. Thus, I cannot conclude that, although W.B.S. has the right to competent, effective counsel in a juvenile-delinquency proceeding, it necessarily follows that W.B.S. has

¹¹I believe that the Alabama Supreme Court's decision in A.D.R. and its subsequent decision to abrogate A.D.R. by amending only the Alabama Rules of Juvenile Procedure allow this Court to draw the conclusion that, although it briefly allowed Rule 32 as an avenue for relief in juvenile-transfer cases, the Alabama Supreme Court did not intend Rule 32 to operate to allow such action in future cases.

a "right" to collaterally challenge his counsel's effectiveness under Rule 32, Ala. R. Crim. P.¹²

To agree with W.B.S.'s argument on appeal and hold that Rule 32 extends to juveniles who have been adjudicated delinquent, this Court would have to stretch the plain language of Rule 32 to the point that this Court is simply rewriting the rule, which, of course, we cannot do. See Marshall v. State, 884 So. 2d 900, 905 n.5 (Ala. 2003) ("The Court of Criminal Appeals may not, however, amend the rules of procedure."). Because the scope of Rule 32, Ala. R. Crim. P., is plain and excludes from its purview juveniles who have been adjudicated delinquent, and because to read Rule 32 in a manner to include juveniles who have been adjudicated delinquent would amount to amending Rule 32, Ala. R. Crim. P., the Alabama Supreme Court is the only court that can provide W.B.S. the relief he seeks.¹³

¹²Of course, this Court's holding does not completely foreclose a juvenile's right to challenge his counsel's effectiveness; rather, it simply requires a juvenile to challenge his counsel's effectiveness by some other means--namely, in a motion for a new trial, on direct appeal, or perhaps by filing a common-law writ.

¹³Like the main opinion, I urge the Alabama Supreme Court to address the issue presented in this case. Squarely

Because the circuit court correctly concluded that neither Rule 32, Ala. R. Crim. P., nor Rule 60(b), Ala. R. Civ. P., apply to juveniles who have been adjudicated delinquent, I concur with the judgment of this Court affirming the circuit court's judgment.

deciding this issue would provide this Court, the circuit courts, juvenile courts, and those children who have been adjudicated delinquent greater clarity as to whether there exists such an instrument as a "postadjudication" petition in juvenile-delinquency cases and, if so, how "postadjudication" petitions are to be treated.

Of course, allowing "postadjudication" petitions will require courts to address other issues that would be unique to juvenile-court proceedings and to determine how those unique issues impact the ability to file a Rule 32 petition. For example, under § 12-15-117(a), Ala. Code 1975, a juvenile court's jurisdiction over "a child [that] has been adjudicated ... delinquent ... shall terminate when the child becomes 21 years of age unless, prior thereto, the judge of the juvenile court terminates its jurisdiction by explicitly stating in a written order that it is terminating jurisdiction over the case involving the child." If that "child," after turning 30 years old, discovers that a nonwaivable, jurisdictional defect occurred during his juvenile-delinquency proceeding and files a Rule 32 petition raising that defect, does the juvenile court have jurisdiction to entertain that petition when that court has by statute lost jurisdiction over that "child?"

BURKE, Judge, dissenting.

I respectfully dissent from the majority's decision to affirm the judgment of the circuit court. However, I agree with the bulk of the majority's reasoning and with the majority's finding that Rule 32, Ala. R. Crim. P., does not apply to juvenile-delinquency adjudications. I also agree with the majority's conclusion that there is no merit to W.B.S.'s claim that Rule 60(b), Ala. R. Civ. P., provides a mechanism by which a juvenile who has been adjudicated delinquent may challenge his or her counsel's effectiveness, and I agree with the majority's reasoning concerning that issue.

On its face, Rule 32 applies only to "any defendant who has been convicted of a criminal offense." See Rule 32.1, Ala. R. Crim. P. Although juvenile-delinquency proceedings are quasi-criminal in nature, see D.G. v. State, 76 So. 3d 852, 855 (Ala. Crim. App. 2011), a juvenile-delinquency adjudication is not a criminal conviction. See D.B. v. State, 861 So. 2d 4, 17 n.3 (Ala. Crim. App. 2003). Therefore, under the plain language of the rule, a person who has been adjudicated delinquent in a juvenile-delinquency proceeding

cannot institute a proceeding under Rule 32, Ala. R. Crim. P., as a means of attacking that adjudication. Furthermore, unlike the Alabama Supreme Court, this Court does not have the power to amend the procedural rules of court to provide a rule-based procedure for relief in a situation like the present one.

Nevertheless, a juvenile in a delinquency case has a right to counsel, see § 12-15-210, Ala. Code 1975, and "[w]here the right to counsel exists, that right is, of course, to effective counsel." Dubose v. State, 652 So. 2d 340, 342 (Ala. Crim. App. 1994). Because that right exists, a remedy should be available to redress a violation of that right. I do not believe that Rule 32 can be used to redress a violation of that right. However, other options exist through which W.B.S. could seek relief. In keeping with the well-established rule of "treat[ing] a pleading and any other filing according to its substance, rather than its form or its style," see Russo v. Alabama Dep't of Corrections, 149 So. 3d 1079, 1080-81 (Ala. 2014), I would treat W.B.S.'s petition as a petition for extraordinary relief through a common-law writ,

such as a writ of error coram nobis or a writ of certiorari.¹⁴ In so doing, I would reverse the circuit court's judgment dismissing W.B.S.'s petition and remand this case to the circuit court for that court to address W.B.S.'s ineffective-assistance-of-counsel claim.

Furthermore, I urge the Alabama Supreme Court to amend either the Alabama Rules of Criminal Procedure or the Alabama Rules of Juvenile Procedure to provide a specific procedure for relief in a situation like the present one. The Supreme Court could amend the rules so that a person who has been adjudicated delinquent in a juvenile-delinquency proceeding can institute a proceeding under Rule 32, Ala. R. Crim. P., to attack that adjudication. I believe providing this specific and well defined procedure would be preferable to using common-law writs to bring such claims.

¹⁴I note that Rule 32 displaced all posttrial remedies, including all petitions for relief through a common-law writ, if those petitions are "seeking relief from a conviction or sentence." Rule 32.4, Ala. R. Crim. P.; see also Hugh Maddox, Alabama Rules of Criminal Procedure § 32.4 n.40 (recognizing that Rule 32 "is a post-conviction remedy"). However, because W.B.S. is attacking a juvenile-delinquency adjudication and not a criminal conviction or sentence, Rule 32 has no application. Clearly, Rule 32 does not displace any remedy in an area where Rule 32 is inoperative.